REMARKS

Claims 24-30 are currently pending in the application. Claims 24, 28 and 30 are independent. Reconsideration of the rejected claims in view of the following remarks is respectfully requested.

35 U.S.C. §102 Rejection

Claims 24-26 and 30 were rejected under 35 U.S.C. §102(b) for being anticipated by U. S. Patent No. 5,417,146 (incorrectly listed by the Examiner as 5,417,147) to ZIMMER et al. This rejection is respectfully traversed.

The claimed invention is directed to an effluent recirculating filter tank system adapted for use in a septic system. The tank is a septic system tank that includes a bottom and sides, an inlet and outlet. An effluent distribution system includes troughs forming channels integrally in at least the bottom and sides of the tank. The channels include at least one bottom channel that opens out to an inside of the tank and that spans substantially between ends of the tank at the bottom, and that also includes additional channels intersecting the bottom channel.

Each of claims 24 and 30 recite:

> An effluent recirculating filter tank system adapted for use in a septic system.

Claim 24 also specifically recites:

> … a septic system tank having a bottom and sides, and an inlet and outlet; at least one bottom channel being open to an inside of the tank and spanning substantially between opposing ends of the tank at the bottom and additional channels intersecting the bottom channel.

Claim 30 also specifically recites:

> … a septic system tank having a bottom and sides, and an inlet and an outlet;
> at least the bottom of the tank comprising integrally formed troughs which open to an inside of the tank;
> at least one of the integrally formed troughs of the bottom of the tank spanning the bottom of the tank and extending between different sides of the tank.

ZIMMER does not show or disclose these features. ZIMMER discloses a tank for water carbonation for use in making "soft drinks" (see col. 1, lines 4-7). ZIMMER clearly does not disclose an effluent recirculating filter tank system adapted for use in a septic system. As the Examiner well knows, wastewater is not water that is carbonized for use in soft drinks. Furthermore, the disclosed tank in ZIMMER is simply not a septic system tank. Finally, col. 2, lines 48-51 of ZIMMER specifically explains that the channel system 36 is arranged on the bottom wall and not on any of the side walls.

Applicant also disagrees with the Examiner's assertions that the claimed invention is not limited to a septic type arrangement. Claims 24 and 30 specifically and positively recite "an effluent recirculating filter tank system", "a septic system tank", and "an effluent distribution system". These features are positively recited, are not merely recited as intended use, and must be accorded patentable weight.

The Examiner also apparently believes that the language describing the tank as a septic tank and the distribution system as an effluent distribution system are merely functional or expressions of intended use. This argument is without merit. The claims do not recite, e.g., a tank for a septic system. Instead, the noted language recites a septic tank system and an effluent distribution system which clearly has specific meanings in the art and which clearly breath life and meaning into the claim and limits the structure of that article or apparatus and therefore must be given weight. See MPEP 2111.02.

Therefore, claims 24 and 30 clearly recite allowable subject matter, not disclosed, or even suggested, in ZIMMER.

Accordingly, Applicant respectfully requests that the rejection over claims 24-26 and 30 be withdrawn.

35 U.S.C. §103 Rejections

Over Zimmer with Berg

Claims 24-26, 29 and 30 were rejected under 35 U.S.C. §103(a) over ZIMMER in view of U.S. Patent No. 6,280,614 to BERG et al. This rejection is respectfully traversed.

Applicant agrees with the Examiner that ZIMMER does not disclose or suggest that the channels can be formed on the sides of the tank. However, as explained above, it is also apparent that ZIMMER teaches a tank for drinking water carbonation (see col. 1, lines 4-7) and not an effluent recirculating filter tank system adapted for use in a septic system, much less, one that utilizes a septic system tank.

BERG does not cure the deficiencies of ZIMMER. While it is apparent that BERG teaches a septic system tank, Figs. 2 and 6 of BERG clearly illustrate that the tank includes troughs defined by ribs 4 that do not have any intersecting troughs. The Examiner simply cannot ignore the fact that Figs. 2 and 6 of BERG show a tank which is entirely devoid of any intersecting troughs or any integrally formed troughs which span the bottom of the tank.

Finally, the Examiner has failed to establish any proper basis or motivation for combining the teachings of these documents. Indeed, Applicant submits that the above-noted differences between these documents actually teach away from their combination. For example, there is no logical basis for replacing the tank in BERG with that of

ZIMMER or vice versa. While it is true that ZIMMER teaches a tank with bottom channels, ZIMMER does not teach side wall channels and specifically relates to a carbonizing water tank that is not useful in a septic system. Thus, if the tank of ZIMMER is replaced with the tank in BERG (as suggested by the Examiner), the result would be a tank which would not function properly in a septic system. Also, such a modification would clearly contradict the specific disclosure of ZIMMER which treats water for human consumption and not wastewater. ZIMMER, in contrast to the invention and BERG, is entirely unconcerned with, and indeed teaches away from, a septic system tank with integrally formed channels or troughs.

Accordingly, Applicant respectfully requests that the rejection of claims 24-26, 29 and 30 be withdrawn.

Over Zimmer with Townsend

Claims 27 and 28 were rejected under 35 U.S.C. §103(a) over ZIMMER in view of U.S. Patent No. 3,738,527 to TOWNSEND. This rejection is respectfully traversed.

Each of claims 24 and 28 recite:

> An effluent recirculating filter tank system adapted for use in a septic system.

Claim 28 also specifically recites:

> … an effluent distribution system comprising troughs forming channels integrally in at least the bottom and sides of the tank, the channels including at least one bottom channel spanning substantially between opposing ends of the tank at the bottom and additional channels intersecting the bottom channel; and a sheet placed on the bottom of the tank,
> wherein the sheet includes perforations so that effluent can flow from a filter to the integral troughs.

As explained above, Applicant does not disagree with the Examiner that ZIMMER does not disclose or suggest that the channels can be formed on the sides of the tank. However, as explained above, it is also apparent that ZIMMER teaches a tank for drinking water carbonation (see col. 1, lines 4-7) and not an effluent recirculating filter tank system adapted for use in a septic system, much less, one that utilizes a tank utilizing an effluent distribution system.

TOWNSEND does not cure the deficiencies of ZIMMER. While it is apparent that TOWNSEND teaches a tank liner system, TOWNSEND does not disclose that the tank can include any troughs, much less, intersecting troughs. Nor has the Examiner identified any language in TOWNSEND which explains that the disclosed liner can be used on a septic system tank or on an effluent recirculating filter tank system adapted for use in a septic system.

Finally, the Examiner has failed to establish any proper basis or motivation for combining the teachings of these documents. Indeed, Applicant submits that the above-noted differences between these documents actually teach away from their combination. For example, there is no logical basis for replacing the tank in TOWNSEND with that of ZIMMER or vice versa. While it is true that ZIMMER teaches a tank with bottom channels, ZIMMER does not teach side wall channels and specifically relates to a carbonizing water tank that is not useful in a septic system. Thus, if the tank of ZIMMER is replaced with the tank in TOWNSEND (as suggested by the Examiner), the result would be a tank that lacks any troughs or channels and which would not function properly in a septic system. Also, such a modification would clearly contradict the specific disclosure of ZIMMER which treats water for human consumption and not waste

water. ZIMMER, in contrast to the invention, is entirely unconcerned with, and indeed teaches away from, a septic system tank with integrally formed channels or troughs.

Accordingly, Applicant respectfully requests that the rejection of claims 27 and 28 be withdrawn.

Over Zimmer with Berg and Townsend

Claims 27 and 28 were also rejected under 35 U.S.C. §103(a) over ZIMMER in view of BERG and TOWNSEND. This rejection is respectfully traversed.

As explained above, Applicant does not disagree with the Examiner that ZIMMER does not disclose or suggest that the channels can be formed on the sides of the tank. However, as explained above, it is also apparent that ZIMMER teaches a tank for drinking water carbonation (see col. 1, lines 4-7) and not an effluent recirculating filter tank system adapted for use in a septic system, much less, one that utilizes a tank utilizing an effluent distribution system.

BERG does not cure the deficiencies of ZIMMER. While it is apparent that BERG teaches a septic system tank, Figs. 2 and 6 of BERG clearly illustrates that the tank includes troughs defined by ribs 4 that do not have any intersecting troughs. The Examiner simply cannot ignore the fact that Figs. 2 and 6 of BERG show a tank which is entirely devoid of any intersecting troughs or any integrally formed troughs which span the bottom of the tank.

TOWNSEND does not cure the deficiencies of ZIMMER or BERG. While it is apparent that TOWNSEND teaches a tank liner system, TOWNSEND does not disclose that the tank can include any troughs, much less, intersecting troughs. Nor has the

Examiner identified any language in TOWNSEND which explains that the disclosed liner can be used on a septic system tank.

Finally, the Examiner has failed to establish any proper basis or motivation for combining the teachings of these documents as explained above.

Accordingly, Applicant respectfully requests that the rejection of claims 27 and 28 be withdrawn.

Response to Examiner's Arguments

(1) On page 4 of the Final Office Action, the Examiner acknowledges that ZIMMER does not teach an effluent system and a septic tank, but explains that such language relates to the manner in which the apparatus is intended to be employed. Applicant disagrees and refers the Examiner to MPEP 2111.02.

> MPEP 2111.02 Weight of Preamble
>
> PREAMBLE IS NONLIMITING UNLESS IT BREATHES LIFE AND MEANING INTO THE CLAIM
>
> The preamble is not given the effect of a limitation unless it breathes life and meaning into the claim. In order to limit the claim, the preamble must be "essential to point out the invention defined by the claim." Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951) (discussed below). In claims directed to articles and apparatus, any phraseology in the preamble that limits the structure of that article or apparatus must be given weight. In re Stencel, 828 F.2d 751, 4 USPQ2d 1071 (Fed. Cir. 1987) (discussed below). On the other hand, a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. In re Hirao, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) (process claims, discussed below); Kropa v. Robie, 187 F.2d at 152, 88 USPQ at 481 (claims directed to apparatus, products, chemical structure, etc., as discussed below). Emphasis Added.
>
> In Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951), a preamble reciting "An abrasive article" was deemed essential to point out the invention defined by claims to an article comprising abrasive grains and a

> hardened binder and the process of making it. The court said that "it is only by that phrase that it can be known that the subject matter defined by the claims is comprised as an abrasive article. Every union of substances capable inter alia of use as abrasive grains and a binder is not an `abrasive article.' " Id. at 481, 187 F.2d at 152. Therefore, the preamble served to further define the structure of the article produced.

Applicant submits that the language describing the system as an effluent system and the tank as a septic tank and not merely functional or expressions of intended use. Instead, the noted language clearly breathes life and meaning into the claim and limits the structure of that article or apparatus and therefore must be given weight.

Furthermore, the Examiner's argument neglects to consider the fact that much of the noted language is recited in the body of the claim, not just the preamble. The body of the claims clearly recite, for example, a septic tank system and an effluent distribution system. Such terms are clearly not function or expressions of intended use and cannot be ignored or mischaracterized as non-structural – especially when these terms have a well know meaning in the art. For example, a septic tank is defined by Webster's II New College Dictionary as "[a] tank in which a continuous flow of sewage is decomposed by anaerobic bacteria."

(2) On page 4 of the Final Office Action, the Examiner also asserts that the tank of ZIMMER is "inherently capable of recirculating effluent in a septic tank system". Applicant does not understand this statement since ZIMMER does not even mention a septic tank system. Furthermore, to the extent that the Examiner is basing the instant rejection on an argument of inherency consistent with MPEP 2112, Applicant notes that MPEP 2112 specifically states, in part:

> "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy,* 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original) (Applicant's invention was directed to a biaxially oriented, flexible dilation catheter balloon (a tube which expands upon inflation) used, for example, in clearing the blood vessels of heart patients). The examiner applied a U.S. patent to Schjeldahl which disclosed injection molding a tubular preform and then injecting air into the preform to expand it against a mold (blow molding). The reference did not directly state that the end product balloon was biaxially oriented. It did disclose that the balloon was "formed from a thin flexible inelastic, high tensile strength, biaxially oriented synthetic plastic material." *Id.* at 1462 (emphasis in original). The examiner argued that Schjeldahl's balloon was inherently biaxially oriented. The Board reversed on the basis that the examiner did not provide objective evidence or cogent technical reasoning to support the conclusion of inherency.).

The Examiner has neither stated that the rejection is based on inherency, nor provided any basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.

(3) On page 4 of the Final Office Action, the Examiner asserts that TOWNSEND teaches lining a storage tank with a protective sheet and that one having ordinary skill in the art, having reviewed TOWNSEND, would be motivated to modify the tank of ZIMMER/BERG to use such a liner. The Examiner also acknowledges that this would require forming perforations in the liner but explains that this would be obvious. Applicant disagrees. There is no prior art basis for the Examiner's assertion that making perforations in a liner would be obvious. In fact, TOWNSEND teaches away from making the liner with perforations by specifically teaching to make the liner impervious (see Abstract and col. 1, lines 56-57). Furthermore, as TOWNSEND teaches a liner for a storage container and not a septic tank (or any portion of an effluent system for that

matter), one having ordinary skill in the art of effluent systems would not look to the art of storage tank liners for a liner, and certainly would not look to use the impervious liner of TOWNSEND in the tank system of ZIMMER/BERG which requires a liner that has perforations.

(4) On page 5 of the Final Office Action, the Examiner also asserts that one having ordinary skill in the art, having reviewede ZIMMER and BERG, would be motivated to combine the teachings of these documents. Applicant disagrees. ZIMMER relates to a tank for water carbonation for use in making "soft drinks" (see col. 1, lines 4-7). One having ordinary skill in the art of effluent systems would not look to the art of soft drink making at least because ZIMMER clearly does not disclose an effluent recirculating filter tank system adapted for use in a septic system. As the Examiner well knows, wastewater is not water that is carbonized for use in soft drinks. The disclosed tank in ZIMMER is simply not a septic system tank.

Although the Examiner has concluded that it would have been obvious to combine the teachings of ZIMMER, BERG and TOWNSEND, the Examiner neglects to set forth any proper basis for combining the teachings of the applied documents. In establishing a *prima facie* case of obviousness under 35 U.S.C. § 103, it is incumbent upon the Examiner to provide a reason *why* one of ordinary skill in the art would have found it obvious to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. *See Ex parte Clapp*, 227 USPQ 972 (B.P.A.I. 1985) To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary

skill in the art and not from Applicant's disclosure. See, for example, *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988). As noted above, each of the applied documents is silent with regard to a number of recited features and each of the documents relates to different devices that function in different manners. Moreover, ZIMMER does not teach or suggest modifying the structure or operation of BERG in the manner asserted by the Examiner.

Because the art of record fails to provide any reasonable explanation why one ordinarily skilled in the art would utilize such an arrangement, and/or fails to disclose or suggest the problems that such an arrangement would address, Applicant submits that the art of record fails to provide the requisite motivation or rationale as to *why* one ordinarily skilled in the art would modify ZIMMER to include features of any of the secondary references in the manner asserted by the Examiner. That is, Applicant submits that because the Examiner has not set forth any basis or reason found in the art of record for combining these documents, the instant rejection has no basis in the art of record, such that the rejection is improper and should be withdrawn.

Rejections based on 35 U.S.C. § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The Examiner has the initial duty of supplying the factual basis for the rejection and may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis. *See In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967). As stated in *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-313 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984):

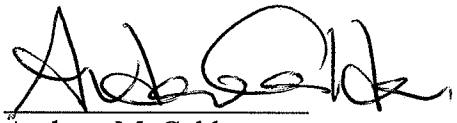
> [t]o imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.

Applicant submits that the only reason to combine the teachings of the applied references in the manner proposed by the Examiner is the result of a review of Applicant's disclosure and the application of impermissible hindsight. And, in any event, such a combination would still not result in the claimed invention.

CONCLUSION

In view of the foregoing remarks, Applicant submits that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed.

Respectfully submitted,
Carlos V. PERRY, Jr.



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